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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,884	12/30/2003	Gary Borgerding	29020/321A	8419
34431	7590	07/11/2006	EXAMINER	
HANLEY, FLIGHT & ZIMMERMAN, LLC 20 N. WACKER DRIVE SUITE 4220 CHICAGO, IL 60606			GILBERT, WILLIAM V	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/748,884	<b>Applicant(s)</b> BORGERDING, GARY	
	<b>Examiner</b> William V. Gilbert	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 8 and 21-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7, 9-12, 15, 16 and 20 is/are rejected.
- 7) ☒ Claim(s) 4-6, 13, 14 and 17-19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)✓  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>07/18/09; 11/16/05</u> | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 3635

**DETAILED ACTION**

***Election/Restrictions***

1. Claims 8, 21-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 22 May 2006.

Applicant's election with traverse of Claims 1-21 in the reply filed on 22 May 2006 is acknowledged. The traversal is on the ground(s) that Examiner did not provide any reasoning as to why the restriction was proper. This is not found persuasive because pursuant to Paragraph 1 of the Restriction, the Examiner noted that the species are patentably distinct from each other. Applicant notes in the Remarks section of his response that the search on behalf of the Examiner would not be burdensome. Examiner argues that the search would be burdensome because of the variations that are within the seals (compare Figure 3 to Figure 11) and the different types of bumpers used in the apparatus (compare Figure 3 to Figure 7 to Figure 11 to Figure 14) would require a search for each of these elements and would therefore be burdensome on the Examiner.

Further, the Applicant elected Claims 8-21 corresponding to Figures 20-24. Regarding Claims 8 and 21, these claims provide

Art Unit: 3635

for a "curved distal edge". According to the specification (Page 7, lines 15-18), the curved distal edge (78) corresponds Species IV (Figures 14-16). Claims 8 and 21, therefore, will not be examined. As a result, the following claims were examined for this Office Action: 1-7, 9-20.

The requirement is still deemed proper and is therefore made FINAL.

#### ***Information Disclosure Statement***

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered. These references are cited in PTO-892, so they were considered.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3635

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 9, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Rieder et al. (U.S. Patent No. 3,322,132).**

Regarding Claim 9, Rieder discloses a deflector (Figure 3, generally), comprising a frame (11, 22) that can pivot relative to a wall (26, 27), a seal (45, 46) in front of the building wall being vertically and horizontally movable (Column 2, lines 50-59), a hanger (43) that suspends the seal from the frame, and a flexible member (19) engaging the frame (11) and held in tension to limit downward pivotal movement of the frame (Column 3, lines 19-28).

Regarding Claim 10, Rieder discloses the flexible member (19) is a pliable sheet (Column 3, lines 19-28) that overlays the frame (Figure 3, generally), and the sheet and the frame provide a canopy (Figure 3, generally).

Regarding Claim 11, Rieder discloses a pliable panel (43, Column 2, lines 50-59) that suspends the seal from the frame.

Art Unit: 3635

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, 7, 12, 16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rieder et al. (U.S. Patent No. 3,322,132) in view of Hofmann et al. (US Publication 2001/0004814 A1).

Regarding Claims 1 and 16, Rieder discloses a deflector (Figure 3, generally) comprising a frame (11, 22), a seal (45,

Art Unit: 3635

46) in front of the building wall being vertically and horizontally movable (Column 2, lines 50-59), a front bumper (48, 49), and a hanger (43) that suspends the seal from the frame comprising a pliable panel (Column 2, lines 50-59 for Claim 1) and the hanger (43) limits the seal from continual rotation about itself (see Figure 3, generally, per Claim 16). While Rieder discloses a bumper (48, 49), it does not disclose the bumper's being in front of the seal. Hoffmann discloses a seal for a loading dock (Figure 8, generally) where the bumper (60, 175) is in front of the seal (114). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the bumper in Rieder be in front of the seal as disclosed in Hoffmann. One would have been motivated to make such a modification because the bumper would aid in the prevention of damage to the sealing mechanism (Hoffmann Page 4, paragraph 0047).

Regarding Claim 2, Rieder discloses the hanger (43) limits the seal (45, 46) from continual rotation about itself (see Figure 3, generally).

Regarding Claim 3, Rieder discloses the pliable panel (43) extending around the seal (45, 46; see Figure 3, generally).

Regarding Claim 7 and 15, the statement "wherein the front bumper can yield more readily in a forward direction away from

Art Unit: 3635

the building wall than in a rearward direction toward the building wall when the deflector is attached to the building wall," is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The invention in Rieder is capable of meeting the limitation in Claim 7.

Regarding Claim 12, Rieder discloses the claimed invention (see rejection of Claim 9, above) except that the front bumper (48, 49) is in front of the seal (45, 46). Hoffmann discloses a seal for a loading dock (Figure 8, generally) where the bumper (60, 175) is in front of the seal (114). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the bumper in Rieder be in front of the seal as disclosed in Hoffmann. One would have been motivated to make such a modification because the bumper would aid in the prevention of damage to the sealing mechanism (Hoffmann Page 4, Paragraph 0047).

Regarding Claim 20, the statement "wherein the front bumper can yield more readily in one direction than in an opposite direction," is a statement of intended use of the claimed



Art Unit: 3635

invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Rieder meets Claim 20 in that with the front bumper in its suspended state (i.e. in tension), it will yield more readily in an upward direction than in the opposite downward direction.

#### ***Allowable Subject Matter***

5. Claims 4-6, 13, 14 and 17-19 are allowed to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571.272.6842. The fax phone number for the

Art Unit: 3635

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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